The same applies to a limited extent to an easement obtained by prescription. It is certainly desirable that the public easement should be as broad as possible. Streets and highways are the natural places for the constructions required by the various public utilities. Private rights are least interfered with, because the streets are already surrendered to public uses. For that reason, damages are generally nominal, when an additional servitude is held to be imposed.[17] Condemnation proceedings are expensive and seem to be unnecessary. Yet, a decision which upholds the rights of private property, even for purely technical reasons, is not to be condemned. The remedy lies with the legislature. Statutes should provide for the taking of the fee, whenever land is taken for street or highway.

The Constitutionality of a State Appropriation to a Private Association.

The decision of the supreme court of Michigan in the case of *Michigan Corn Improvement Association* v. *Auditor General,* 113 N. W. 582, presents in a new form the question of the constitutional limitation on legislatures in the matter of granting bounties to associations representing particular industries. The statute to be decided upon was one appropriating five hundred dollars a year, for the years of 1907 and 1908, "for the use of the Michigan Corn Improvement Association in the prosecution of its work of creating a deeper interest in and a better knowledge of the culture and improvement of corn;" the sums to be expended "under the direction of the board of directors of said association in such way as in its judgment will most effectually attain the ends sought." The beneficiary is a voluntary, unincorporated association, whose membership is limited to "persons actively interested in the improvement of corn and residents of the State of Michigan," and whose objects are: (1) "To stimulate effort to improve the quality of the corn crop and increase the yield of both grain and fodder; (2) to develop better methods of culture and disseminate the knowledge of the same; (3) by meetings and discussions to arouse a deeper interest and develop a more thorough unity of effort in corn production; and (4) to establish ideals for both ear and plant for the different varieties and breeds." At its annual meeting is held a corn

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[16] Dillon on Municipal Corporations (4th Ed.), Sec. 722.

[17] *Eels* v. *A. T. & T. Co.,* 143 N. Y., 133 (1894).

exhibit, at which prizes are offered, to its members only, for the best exhibit of corn.

The court held the act unconstitutional, as discriminating in favor of one industry; "the only persons," it said, "who will be directly benefited by the proposed appropriation are those 'actively interested in the improvement of corn.'" This is practically all that the court says of its own motion, the case being ruled directly, in its judgment, by the leading decision in the state on the subject of bounties, the *People* v. *Salem*, 20 Michigan, 452 (1870). In the latter case the court, in a vigorous opinion delivered by Judge Cooley, refused to recognize the constitutionality of an act authorizing certain counties to levy a tax to aid in the construction of a railroad. In the course of the opinion, Judge Cooley announced the principle that the state has no power to grant bounties, such as "to furnish the capital to set private parties up in any kind of business, or to subsidize their business after they have entered upon it." It was after quoting this decision that the present court decided the corn case.

The principle has long been recognized that neither taxation nor appropriation by the legislature is valid if made for any save a directly public purpose. "Because," says the United States Supreme Court,[1] "such a tax would, if collected, be the transfer of the property of individuals to aid in the projects of gain and profit of others," and hence a taking of property without just compensation. But the determination in each particular instance of the true question as to what is and what is not a "public purpose," is ordinarily one of legislative discretion, unhampered by judicial interference. "The tax must be considered valid, unless it is for a purpose in which the community taxed has palpably no interest; where it is apparent that a burden is imposed for the benefit of others, and where it would be so pronounced at first blush."[2] Hence the tendency of the courts is to sustain the legislation whenever possible, and we have a large number of reported cases in which they have refused to hold the statute invalid, because it did not appear to be a gross abuse of discretion.

Thus the general rule as to legislation in aid of railroads is different from that laid down in Michigan.[3] While acts have

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[1] *Loan Association* v. *Topeka*, 20 Wallace, 655 (1874).

[2] *Sharpless* v. *Mayor of Philadelphia*, 21 Pa., 168 (1853).

[3] *Taylor* v. *Ypsilanti*, U. S., 60 (1881); Cooley on Constitutional Limitations, 676 note; *Stockton R. R.* v. *Stockton*, 41 Cal., 147 (1871).

been held valid which granted bounties to public grist-mills [4] (though these are now mostly obsolete [5]); to volunteers in time of war;[6] and to various local industries, such as the culture of silk;[7] wherever, in short, any direct public benefit could be discerned as accruing from the legislation. On the other hand, in the absence of such direct benefit, however great may be the incidental advantage to the public, the statute is ordinarily held unconstitutional.[8] But it is to be noted that these cases all deal with legislation whose avowed object is to assist some private *commercial* enterprise, and as such the Michigan court seems to have viewed the act in question. Should it affect the decision in any way, if it be considered that the purpose of the association which was being benefited was at least as much educational as commercial? That it was "to disseminate knowledge" and "to establish ideals," as well as "to stimulate effort?"

Bounties to agricultural societies have been held valid,[9] where they have been incorporated, and one of the terms of the charter is the holding of an annual fair, the theory being that it is of great benefit to the entire commonwealth that progressive interest in farming be stimulated. Moreover, this is in no sense a single industry, but rather a phase of national life. Educational institutions, also, are the lawful recipients of state funds, but only where they are under the control of the state or municipality.[10] Whenever they partake of the nature of private foundations, they come within the constitutional prohibition. Thus, in *Curtis* v. *Whipple*, an act authorizing a bonus to aid the Jefferson Liberal Institute was declared void because, though a school of learning, it was a private enterprise; the court distinguishing direct public benefits, such as might accrue were the school under direct municipal control and subject to public requirements as to who should and who should not be admitted, from those incidentally due to the existence of an institution of learning in the community. And in *Jenkins* v. *Anderson*, the aid was

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[4] *Burlington Township* v. *Beasley*, 94 U. S., 310 (1876).

[5] Gray—Limitations of the Taxing Power, 135, 191 (1906).

[6] *Booth* v. *Woodbury*, 32 Com., 118 (1864); *Brodhead* v. *Milwaukee*, 19 Wis., 624 (1865).

[7] *Stockton R. R.* v. *Stockton*, 41 Cal., 147 (1871).

[8] *Deering* v. *Peterson*, 77 N. W. (Minn.), 568 (1898); *Michigan Sugar Co.* v. *Auditor General*, 124 Mich., 674 (1900); *Loan Association* v. *Topeka, supra.*

[9] *Hixon* v. *Eagle River*, 91 Wis., 649.

[10] *Curtis* v. *Whipple*, 24 Wis., 350 (1869); *Jenkins* v. *Anderson*, 103 Mass., 74.

denied to a school established by funds provided by the will of a citizen, because the governing board consisted of trustees appointed by the will.

Thus the distinction is one in kind, and not in degree; the public benefit must be clear, direct and unmistakable; no amount of incidental advantage to the community will avail. It would seem, therefore, that even viewing this as an association largely educational in its nature, and approaching the criticism of the statute on general principles of common law, thus laying aside the anomalous ruling of *The People* v. *Salem*, its constitutionality could not be sustained. It is most obviously special legislation in favor of a limited group of individuals, and although the group is capable of enlargement, the object to be attained is not. "The right to tax depends on the ultimate use, purpose and object for which the fund is raised, and not on the nature or character of the person or corporation whose intermediate agency is to be used in applying it." [11]

Doctrine of Price *v.* Neal; Effect of Indorsement by Holder.

The doctrine of *Price* v. *Neal* [1] to the effect that the drawee of a bill of exchange or check of which the drawer's signature is forged cannot recover the money paid by him to the holder is well established. To this doctrine, however, there are exceptions, which unfortunately stand on more precarious footing, and are more uncertain in their applications. In general, these exceptions arise out of negligence or bad faith on the part of the holder. Thus, where by custom a duty of precaution is thrown upon a collecting bank which it neglects,[2] or where the circumstances are such as to put the holder on suspicion and he fails to exercise due diligence,[3] the case is taken outside the general rule. It has been held that a further exception exists where the instrument is endorsed by the holder, on the ground that the signature amounts to a guaranty of genuineness.

The recent case of *Williamsburgh Trust Co.* v. *Tum Suden*, 120 N. Y. App. Div. 518, sanctions this view. The idea that the

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[11] *Sharpless* v. *Mayor of Philadelphia*, 21 Pa., 168 (1853).

[1] 3 Burr, 1354.

[2] *Ellis* v. *Ohio Ins. Co.*, 4 Ohio, 628.

[3] *Nat. Bank of N. America* v. *Bangs*, 106 Mass., 441; *Rouvant* v. *San Antonio Nat. Bank*, 63 Tex., 612.